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HOUSE BILL 1206

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

KIP W. NICELY

AN ACT

RELATING TO PUBLIC EMPLOYEES; ENACTING THE PUBLIC EMPLOYEES
RETIREMENT ANNUITY ACT; ENACTING THE PUBLIC EMPLOYEES RETIREMENT
SAVINGS ACT; PROVIDING RETIREMENT BENEFITS FOR CERTAIN PUBLIC
EMPLOYEES EMPLOYED ON AND AFTER JULY 1, 1998; AUTHORIZING A
RETIREMENT SAVINGS PLAN; AMENDING AND ENACTING SECTIONS OF THE
NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1
through 17 of this act may be cited as the "Public Employees
Retirement Annuity Act".

Section 2. [NEW MATERIAL] DEFINITIONS. -- As used in the
Public Employees Retirement Annuity Act:

A. "affiliated public employer" means the state and
any public employer affiliated with the association as provided

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1 in the Public Employees Retirement Act, but does not include an
2 employer pursuant to the Magistrate Retirement Act, the Judicial
3 Retirement Act or the Educational Retirement Act;

4 B. "association" means the public employees
5 retirement association defined in the Public Employees
6 Retirement Act;

7 C. "board" means the retirement board;

8 D. "employee" means any employee of an affiliated
9 public employer;

10 E. "dependent child" means a natural or adopted
11 child who is physically or mentally incapable of financial self-
12 support, regardless of age;

13 F. "educational retirement system" means the
14 retirement system provided for in the Educational Retirement
15 Act;

16 G. "effective date of retirement" means the first
17 day of the month following the month in which the participant
18 met all requirements for retirement;

19 H. "former participant" means a person who was first
20 employed by an affiliated public employer on or after July 1,
21 1998 and who has terminated all such employment;

22 I. "fund" means the funds established pursuant to
23 the Public Employees Retirement Annuity Act;

24 J. "participant" means an employee first employed by
25 an affiliated public employer on or after July 1, 1998 who is:

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1 (1) currently employed by a affiliated public
2 employer;

3 (2) not currently employed by an affiliated
4 public employer and who has not retired;

5 K. "participation" means membership in the
6 association beginning on or after July 1, 1998;

7 L. "public employer" means the state, any
8 municipality, county, metropolitan arroyo flood control
9 authority, economic development district, regional housing
10 authority, soil and water conservation district, entity created
11 pursuant to a joint powers agreement, council of government,
12 conservancy district, water and sanitation district, water
13 district and metropolitan water board, including the boards,
14 departments, bureaus and agencies of a public employer, so long
15 as these entities fall within the meaning of "governmental plan"
16 as that term is used in Section 414(d) of the Internal Revenue
17 Code of 1986, as amended;

18 M. "retire" means to:

19 (1) terminate employment with all employers
20 covered by the state system or the educational retirement
21 system; and

22 (2) receive a pension or annuity from the state
23 system or a pension from the educational retirement system;

24 N. "retired participant" means a person who has
25 retired and is receiving a retirement annuity from the fund;

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1 O. "retirement annuity" means a series of monthly
2 payments to a retired participant or survivor beneficiary
3 pursuant to the provisions of the Public Employees Retirement
4 Annuity Act;

5 P. "salary" means the base salary or wages paid a
6 participant, including longevity pay, for personal services
7 rendered; provided that "salary" does not include overtime pay,
8 allowances for housing, clothing, equipment or travel, payments
9 for unused sick leave, unless the unused sick leave payment is
10 made through continuation of the participant on the regular
11 payroll for the period represented by that payment, and any
12 other form of remuneration not specifically designated by law as
13 included in salary pursuant to the provisions of the Public
14 Employees Retirement Annuity Act;

15 Q. "state system" means the retirement programs
16 provided pursuant to the provisions of the Public Employees
17 Retirement Act, the Public Employees Retirement Annuity Act, the
18 Judicial Retirement Act and the Magistrate Retirement Act;

19 R. "surviving spouse" means the spouse to whom the
20 participant was married at the time of the participant's death;

21 S. "survivor beneficiary" means a person who
22 receives a retirement annuity or who has been designated to be
23 paid a retirement annuity as a result of the death of a
24 participant or retired participant; and

25 T. "years of service" means a period of time

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1 beginning on the date a person commences employment with an
2 affiliated public employer and ending on the date a person
3 ceases to be an employee of an affiliated public employer
4 because of termination of employment, death or disability and
5 includes any fractions of years of service.

6 Section 3. [NEW MATERIAL] PUBLIC EMPLOYEES RETIREMENT
7 ANNUITY FUND ESTABLISHED--ADMINISTRATION OF FUND--ACCOUNTING
8 FUNDS.--

9 A. The "public employee retirement annuity fund" is
10 created as a trust fund in the state treasury. The fund shall
11 consist of public employer contributions and any investment
12 earnings on those contributions. The board is the trustee of the
13 fund and shall administer and invest it. Investment of the fund
14 shall be made in the types of investments authorized for funds
15 invested pursuant to the Public Employees Retirement Act.

16 B. The board shall administer the provisions of the
17 Public Employees Retirement Annuity Act. The board shall
18 promulgate necessary or appropriate rules and regulations to
19 implement and administer that act.

20 C. Expenses related to the investment of the fund and
21 administration of the Public Employees Retirement Annuity Act
22 shall be paid from the fund.

23 D. For purposes of this section, the board shall
24 establish, within the fund, separate accounting funds known as
25 the "employer's accumulation fund", the "retirement reserve fund"

1 and the "income fund". The maintenance of separate accounting
2 funds shall not require the actual segregation of the assets of
3 the fund.

4 E. The fund and the accounting funds provided for in
5 this section shall be held in trust for participants and shall be
6 used only as provided in the Public Employees Retirement Annuity
7 Act.

8 F. The employer's accumulation fund is the accounting
9 fund in which shall be accumulated the contributions paid by
10 affiliated public employers. Affiliated public employers shall
11 remit contributions to the association in accordance with
12 procedures and schedules established by the association. The
13 board may assess an interest charge and a penalty charge on any
14 late remittance.

15 G. The retirement reserve fund is the accounting fund
16 from which shall be paid all annuities to retired participants
17 and survivor beneficiaries.

18 H. Each year, following receipt of the report of the
19 annual actuarial valuation, the excess, if any, of the reported
20 actuarial present value of annuities being paid and likely to be
21 paid to retired participants and survivor beneficiaries over the
22 balance in the retirement reserve fund shall be transferred to
23 the retirement reserve fund from the employer's accumulation
24 fund.

25 I. The income fund is the accounting fund to which

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1 shall be credited all interest, dividends, rents and other income
2 from investment of the fund, all gifts and bequests, all
3 unclaimed participant contributions and all other money the
4 disposition of which is not specifically provided for in the
5 Public Employees Retirement Annuity Act. Expenses related to the
6 administration of that act shall be paid from the income fund.

7 J. The association shall at least annually distribute
8 all or a portion of the balance in the income fund to the
9 retirement reserve fund and the employer's accumulation fund.
10 Distribution rates shall be determined by the board and may vary
11 for the respective accounting funds.

12 Section 4. [NEW MATERIAL] PARTICIPATION. --

13 A. Every employee first employed by an affiliated
14 public employer on or after July 1, 1998 and every elected
15 official first elected to the position he holds with an
16 affiliated public employer after July 1, 1998 shall be a
17 participant, unless excluded from participation in accordance
18 with Subsection B of this section.

19 B. The following employees and elected officials are
20 excluded from participation:

21 (1) employees and elected officials covered
22 under the provisions of the Public Employees Retirement Act, the
23 Educational Retirement Act, the Judicial Retirement Act, the
24 Magistrate Retirement Act or the provisions of Sections 29-4-1
25 through 29-4-11 NMSA 1978 governing the state police pension

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1 fund;

2 (2) employees designated by the affiliated
3 public employer as seasonal or student employees; and

4 (3) employees of an affiliated public employer
5 who have retired under and are receiving a pension pursuant to
6 the provisions of the Educational Retirement Act, the Public
7 Employees Retirement Act, the Judicial Retirement Act or the
8 Magistrate Retirement Act or a retirement annuity pursuant to the
9 provisions of the Public Employees Retirement Annuity Act.

10 C. Employees designated as seasonal or student
11 employees shall be notified in writing by their affiliated public
12 employer of the designation and the consequences of the
13 designation with respect to participation, service credit and
14 benefits. A copy of the notification shall be filed with the
15 association within thirty days of the date of employment.

16 Section 5. [NEW MATERIAL] RETIREMENT ANNUITY--SERVICE
17 CREDIT--REQUIREMENTS--FORFEITURE--REINSTATEMENT. --

18 A. Personal service rendered an affiliated public
19 employer by a participant shall be credited to the participant's
20 basic retirement annuity service credit account in accordance
21 with board rules and regulations. Service shall be credited to
22 the nearest month. In no case shall a participant be credited
23 with a year of service for less than twelve months of service in
24 a calendar year, more than a month of service for all service in
25 a calendar month or more than a year of service for all service

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1 in a calendar year.

2 B. Service credit shall be forfeited if a participant
3 terminates employment with an affiliated public employer, is not
4 employed by any affiliated public employer and has completed less
5 than two years of service.

6 C. A participant who during a term of employment
7 enters an armed service of the United States shall be given
8 service credit for periods of active duty subject to the
9 following conditions:

10 (1) the participant returns to employment
11 within ninety days following termination of the period of active
12 duty;

13 (2) service credit shall not be given for
14 periods of active duty following voluntary re-enlistment; and

15 (3) service credit shall not be given for
16 periods of active duty that are used to obtain or increase a
17 benefit from another state system or the educational retirement
18 system.

19 D. A participant who entered an armed service of the
20 United States may purchase service credit for periods of active
21 duty subject to the following conditions:

22 (1) the participant pays the purchase cost
23 determined pursuant to the provisions of Subsection E of this
24 section;

25 (2) the participant has five or more years of

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1 service credit accrued according to the provisions of the Public
2 Employees Retirement Annuity Act;

3 (3) the aggregate amount of service credit
4 purchased pursuant to the provisions of this subsection does not
5 exceed five years, reduced by any period of service credit
6 acquired for military service under any other provision of the
7 Public Employees Retirement Annuity Act; and

8 (4) service credit may not be purchased for
9 periods of active duty that are used to obtain or increase a
10 benefit from another state system or the educational retirement
11 system.

12 E. The purchase cost for each year of service credit
13 purchased pursuant to the provisions of this section shall be the
14 increase in the actuarial present value of the retirement annuity
15 of the member under the Public Employees Retirement Annuity Act
16 as a consequence of the purchase, as determined by the
17 association. Full payment shall be made in a single lump-sum
18 amount in accordance with procedures established by the board.

19 F. A participant shall be refunded, after retirement
20 and upon written request filed with the association, the portion
21 of the purchase cost of service credit purchased pursuant to the
22 provisions of this section that the association determines to
23 have been unnecessary to provide the participant with the maximum
24 retirement annuity applicable to the participant. The
25 association shall not pay interest on the portion of the purchase

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1 cost refunded to the participant.

2 Section 6. [NEW MATERIAL] FUNDS NOT SUBJECT TO LEGAL
3 PROCESS--DIVISION OF FUNDS AS COMMUNITY PROPERTY--LEGAL PROCESS
4 TO SATISFY CHILD-SUPPORT OBLIGATIONS. --

5 A. Except as provided in Subsections B and C of this
6 section, none of the money, annuities or other benefits provided
7 pursuant to the provisions of the Public Employees Retirement
8 Annuity Act shall be assignable either in law or in equity or be
9 subject to execution, levy, attachment, garnishment or other
10 legal process.

11 B. A court of competent jurisdiction, solely for the
12 purposes of effecting a division of community property in a
13 divorce or legal separation proceeding, may provide by
14 appropriate order for a determination and division of a community
15 interest in the retirement annuities or other benefits provided
16 for in the Public Employees Retirement Annuity Act. The court
17 shall fix the manner in which warrants are issued, may order
18 direct payments to a person with a community interest in the
19 retirement annuities or other benefits, may require the election
20 of a specific form of payment and designation of a specific
21 survivor beneficiary. Payments made pursuant to such orders
22 shall only be made when a participant's retirement annuity is
23 payable in accordance with the provisions of the Public Employee
24 Retirement Annuity Act. The court shall not alter the manner in
25 which the amount of retirement annuities or other benefits are

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1 calculated by the association or cause any increase in the
2 actuarial present value of the retirement annuities or other
3 benefits to be paid by the association.

4 C. A court of competent jurisdiction, solely for the
5 purposes of enforcing current or delinquent child-support
6 obligations, may provide by appropriate order for withholding
7 amounts due in satisfaction of current or delinquent
8 child-support obligations from the retirement annuities or other
9 benefits provided for in the Public Employees Retirement Annuity
10 Act and for payment of such amounts to third parties. The court
11 shall not alter the manner in which the amount of retirement
12 annuities or other benefits are calculated by the association.
13 The court shall not cause any increase in the actuarial present
14 value of the retirement annuities or other benefits to be paid
15 from the fund. Payments made pursuant to such orders shall only
16 be made when a retirement annuity is payable in accordance with
17 the provisions of the Public Employees Retirement Annuity Act.
18 In no case shall more money be paid out, either in a lump sum or
19 in monthly annuity payments, of the fund in enforcement of
20 current or delinquent child-support obligations than would
21 otherwise be payable at that time.

22 Section 7. [NEW MATERIAL] RETIREMENT ANNUITY--AGE AND
23 SERVICE CREDIT REQUIREMENTS FOR NORMAL RETIREMENT. --

24 A. The age and service credit requirements for the
25 basic retirement annuity provided for in the Public Employees

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1 Retirement Annuity Act are age sixty-two or older and five or
2 more years of service credit.

3 B. If a participant leaves elected office or
4 employment with an affiliated public employer before meeting the
5 age and service credit requirements for the retirement annuity
6 pursuant to Subsection A of this section, that participant may
7 apply for retirement when that participant meets the age and
8 service credit requirements for the retirement annuity pursuant
9 to the provisions of the Public Employees Retirement Annuity Act.

10 C. No participant shall be eligible to receive a
11 retirement annuity pursuant to the provisions of the Public
12 Employees Retirement Annuity Act while still holding elective
13 office or employed by an affiliated public employer, except as
14 otherwise provided in that act.

15 Section 8. [NEW MATERIAL] RETIREMENT ANNUITY--AMOUNT.--
16 The amount of the basic annuity of a participant is equal to one
17 percent of final average salary multiplied by the basic
18 retirement annuity service credit. As used in this section,
19 "final average salary" means one thirty-sixth of the greatest
20 aggregate amount of salary paid a participant for thirty-six
21 consecutive but not necessarily continuous months of service
22 credit.

23 Section 9. [NEW MATERIAL] RETIREMENT ANNUITY--EMPLOYER
24 CONTRIBUTIONS.--An affiliated public employer shall contribute
25 for the participant's retirement annuity seven percent of the

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1 salary of each participant that it employs starting with the
2 first pay period that ends within the calendar month in which the
3 Public Retirement Annuity Act becomes applicable to the
4 participant.

5 Section 10. [NEW MATERIAL] ELECTION OF FORM OF PAYMENT OF
6 RETIREMENT ANNUITY. --

7 A. Except as otherwise provided in Section 6 of the
8 Public Employees Retirement Savings Plan Act, a participant may
9 elect to have payments made under any one of the forms of payment
10 provided in Section 11 of that act. The election of a form of
11 payment and the naming of survivor beneficiary shall be made on a
12 form furnished by and filed with the association prior to the
13 date the first retirement annuity payment is made. An election
14 of form of payment shall not be changed after the date the first
15 retirement annuity payment is made. If the participant is
16 married, the association shall obtain the consent of the
17 participant's spouse to the election of the form of payment and
18 any designation of survivor beneficiary before the election or
19 designation is effective. Except as provided in Subsection C of
20 this section, a named survivor beneficiary shall not be changed
21 after the date the first retirement annuity payment is made if
22 form of payment B or C is elected. Except as otherwise provided
23 in Section 6 of the Public Employees Retirement Savings Plan Act,
24 payment shall be made:

25 (1) under form of payment A if the participant

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1 is not married at the time of retirement and if there is not a
2 timely election of another form of payment; or

3 (2) under form of payment C with the
4 participant's spouse as survivor beneficiary if the participant
5 is married at the time of retirement and there is not a timely
6 election of another form of payment.

7 B. The amount of retirement annuity under forms of
8 payment B, C and D shall have the same actuarial present value,
9 computed as of the effective date of the retirement annuity, as
10 the amount of retirement annuity under form of payment A.

11 C. A retired participant who is being paid a
12 retirement annuity under form of payment B or C with the
13 participant's spouse as the designated survivor beneficiary may,
14 upon becoming divorced from the named spouse and subject to an
15 order of a court as provided for in Section 6 of the Public
16 Employees Retirement Savings Plan Act, elect to have future
17 payments made under form of payment A.

18 Section 11. [NEW MATERIAL] FORMS OF PAYMENT OF A
19 RETIREMENT ANNUITY. --

20 A. Straight life annuity is form of payment A. The
21 retired participant is paid the retirement annuity for life under
22 form of payment A. All payments stop upon the death of the
23 retired participant. The amount of retirement annuity is
24 determined in accordance with the coverage plan applicable to the
25 retired participant.

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1 B. Life payments with full continuation to one
2 survivor beneficiary is form of payment B. The retired
3 participant is paid a reduced retirement annuity for life under
4 form of payment B. When the retired participant dies, the
5 designated survivor beneficiary is paid the full amount of the
6 reduced retirement annuity until death. If the designated
7 survivor beneficiary predeceases the retired participant, the
8 amount of retirement annuity shall be changed to the amount that
9 would have been payable had the retired member elected form of
10 payment A.

11 C. Life payment with one-half continuation to one
12 survivor beneficiary is form of payment C. The retired
13 participant is paid a reduced retirement annuity for life under
14 form of payment C. When the retired participant dies, the
15 designated survivor beneficiary is paid one-half the amount of
16 the reduced retirement annuity until death. If the designated
17 survivor beneficiary predeceases the retired participant, the
18 amount of pension shall be changed to the amount that would have
19 been payable had the retired participant elected form of payment
20 A.

21 D. Life payments with temporary survivor benefits for
22 children is form of payment D. The retired participant is paid a
23 reduced retirement annuity for life under form of payment D.
24 When the retired participant dies, each declared eligible child
25 is paid a share of the reduced retirement annuity until death or

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1 age twenty-five years, whichever occurs first. The share is the
2 share specified in writing and filed with the association by the
3 retired participant. If shares are not specified in writing and
4 filed with the association, each declared eligible child is paid
5 an equal share of the reduced retirement annuity. A
6 redetermination of shares shall be made when the retirement
7 annuity of any child terminates. An eligible child is a natural
8 or adopted child of the retired participant who is under age
9 twenty-five years. A declared eligible child is an eligible
10 child whose name has been declared in writing and filed with the
11 association by the retired participant at the time of election of
12 form of payment D. The amount of retirement annuity shall be
13 changed to the amount of retirement annuity that would have been
14 payable had the retired participant elected form of payment A
15 upon there ceasing to be a declared eligible child during the
16 lifetime of the retired participant.

17 Section 12. [NEW MATERIAL] DISABILITY RETIREMENT
18 ANNUITY. --

19 A. A participant with five years or more of service
20 credit accrued pursuant to the provisions of the Public Employees
21 Retirement Annuity Act may apply to the board for a determination
22 of disability, and upon a determination of disability, the
23 participant shall receive a disability retirement annuity from
24 the fund so long as the disability continues. Determination of
25 disability shall be made by the board in accordance with the

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1 provisions of the Public Employees Retirement Act and rules
2 promulgated pursuant to that act.

3 B. The amount of the disability retirement annuity
4 shall be calculated using the formula for normal retirement as
5 set out in the Public Employees Retirement Annuity Act.

6 Section 13. [NEW MATERIAL] SURVIVOR'S RETIREMENT
7 ANNUITY. --

8 A. Unless a participant has designated a survivor
9 beneficiary in accordance with Subsection B of this section, a
10 survivor retirement annuity shall be paid for life to a
11 participant's or retired participant's surviving spouse.

12 B. A participant may designate, in writing in a form
13 prescribed by the association, a survivor beneficiary to receive
14 the survivor's retirement annuity described in this section. If
15 the participant is married, a designation of survivor beneficiary
16 other than the participant's spouse may only be made with the
17 written consent of the participant's spouse. Marriage subsequent
18 to a designation of survivor beneficiary shall automatically
19 revoke the designation of survivor beneficiary. A designation of
20 survivor beneficiary made pursuant to a court order issued under
21 Section 6 of the Public Employees Retirement Savings Plan Act
22 shall not require the consent of the participant's spouse, if
23 any, and shall not be revoked by the subsequent remarriage of the
24 participant. A designation of survivor beneficiary may be
25 revoked by the participant at any time prior to the participant's

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1 retirement. If the participant is married, a revocation of
2 designation of survivor beneficiary may only be made with the
3 written consent of the participant's spouse.

4 C. If there is no surviving spouse and no designated
5 survivor beneficiary or if the surviving spouse dies while there
6 are still minor and dependent children of the participant, the
7 survivor's retirement annuity shall be paid to all minor and
8 dependent children, if any, of the participant, in equal shares,
9 so long as each child remains a minor or dependent child. As
10 each child ceases to be a minor or dependent child, the number of
11 shares shall be reduced and the amount payable to each remaining
12 child increased proportionately so that the total survivor's
13 retirement annuity remains unchanged as long as there is any such
14 child.

15 D. The survivor's retirement annuity is equal to
16 seventy-five percent of the participant's retirement annuity.

17 E. Survivor beneficiaries shall be eligible for other
18 benefits provided pursuant to the provisions of the Public
19 Employees Retirement Annuity Act, including continuation of group
20 insurance benefits.

21 F. If a participant dies while receiving a disability
22 retirement annuity, the survivor beneficiary shall receive the
23 survivor retirement annuity provided pursuant to the provisions
24 of the Public Employees Retirement Annuity Act.

25 Section 14. [NEW MATERIAL] GROUP INSURANCE--

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1 CONTINUATION. -- If the provisions of the Public Employees
2 Retirement Annuity Act do not apply to a retired participant,
3 that retired participant may continue to be insured under the
4 provisions of any state group insurance plan in effect at the
5 time of retirement or under the terms of any separate subsequent
6 state group insurance plan, if the retired participant pays the
7 entire periodic premium charges for such insurance and consents
8 to have the periodic premium charges deducted from the retired
9 participant's retirement annuity.

10 Section 15. [NEW MATERIAL] SUSPENSION OR FORFEITURE OF
11 BENEFITS. -- If a participant retires and is subsequently employed
12 by any employer covered by any state system or the educational
13 retirement system, the retired participant's retirement annuity
14 shall be suspended effective the first day of the month following
15 the month in which the subsequent employment begins. The
16 suspended retirement annuity of a previously retired participant
17 shall resume and be effective the first day of the month
18 following the month in which the participant leaves office or
19 terminates the subsequent employment.

20 Section 16. [NEW MATERIAL] ADJUSTMENT OF RETIREMENT
21 ANNUITY. --

22 A. If payment of a retirement annuity or other
23 retirement benefit causes a decrease in the amount of monetary
24 payments or other needs-based benefits due to a payee from any
25 other governmental agency, the retirement annuity or other

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1 retirement benefit shall be reduced for the period during which
2 the retirement annuity or other retirement benefit prevents
3 payment of another needs-based benefit to result in payment of
4 the maximum amount possible by the association and the other
5 governmental agency to the payee. Any amounts that would
6 otherwise be paid out that are not paid in accordance with the
7 provisions of this section shall not be recoverable by a payee at
8 any later date.

9 B. If there is a change in the effect of retirement
10 annuity or other retirement benefit on any monetary payments or
11 other needs-based benefits due to a payee from any other
12 governmental agency, the retirement annuity or other retirement
13 benefits shall be adjusted to result in the maximum total benefit
14 to the payee. In no event shall any pension be increased in an
15 amount greater than that authorized by the Public Employees
16 Retirement Annuity Act.

17 C. The provisions of this section are mandatory and
18 shall not be waived or declined by a payee. Each payee shall
19 provide the association with all information necessary for the
20 association to carry out the requirements imposed by this
21 section.

22 D. If the payee fails to provide all the facts
23 necessary to comply with the requirements imposed by this
24 section, and payment of a retirement annuity or other retirement
25 benefit is made without making the adjustment required by this

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1 section, neither the board, the executive secretary nor any
2 officer or employee of the association or board shall be liable
3 to any third party because the adjustment was not made as
4 required.

5 E. As used in this section:

6 (1) "governmental agency" means the federal
7 government, any department or agency of the federal government,
8 any state and any department, agency or political subdivision of
9 a state;

10 (2) "needs-based benefit" means monetary or
11 other benefits for which a determination of eligibility is based
12 upon the recipient's level of income and resources;

13 (3) "payee" means a retired member or the
14 refund beneficiary or survivor beneficiary of a retired
15 participant;

16 (4) "retirement annuity" means a normal
17 retirement, survivor or disability retirement annuity payable to
18 a retired member or survivor beneficiary pursuant to the Public
19 Employees Retirement Annuity Act; and

20 (5) "total benefits" means annuities plus any
21 other monetary payments or other needs-based benefits due to the
22 payee from any governmental agency.

23 Section 17. [NEW MATERIAL] CORRECTIONS OF ERRORS AND
24 OMISSIONS- - ESTOPPEL. - -

25 A. If an error or omission in an application or its

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1 supporting documents results in overpayment to a participant or
2 beneficiary of a participant, the association shall recover all
3 overpayments made for a period of up to one year prior to the
4 date the error or omission was discovered.

5 B. A person who is paid more than the amount that is
6 lawfully due him as a result of fraudulent information provided
7 by the participant or beneficiary shall be liable for the
8 repayment of that amount to the association plus interest on that
9 amount at the rate set by the board plus all costs of collection,
10 including attorney fees if necessary. Recovery of such
11 overpayment shall extend back to the date the first payment was
12 made based on the fraudulent information.

13 C. Statements of fact or law made by board members or
14 employees of the board or the association shall not estop the
15 board or the association from acting in accordance with the
16 applicable statutes.

17 Section 18. [NEW MATERIAL] SHORT TITLE. -- Sections 18
18 through 29 of this act may be cited as the "Public Employees
19 Retirement Savings Act".

20 Section 19. DEFINITIONS. -- As used in the Public Employees
21 Retirement Savings Act:

22 A. "affiliated public employer" means the state and
23 any public employer affiliated with the association as provided
24 in the Public Employees Retirement Act, but does not include an
25 employer pursuant to the Magistrate Retirement Act, the Judicial

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1 Retirement Act or the Educational Retirement Act;

2 B. "association" means the public employees
3 retirement association defined in the Public Employees Retirement
4 Act;

5 C. "board" means the retirement board;

6 D. "employee" means any employee of an affiliated
7 public employer;

8 E. "dependent child" means a natural or adopted child
9 who is physically or mentally incapable of financial self-
10 support, regardless of age;

11 F. "effective date of retirement" means the first day
12 of the month following the month in which the participant met all
13 requirements for retirement;

14 G. "former participant" means a person who was first
15 employed by an affiliated public employer on or after July 1,
16 1998 and who has terminated all such employment;

17 H. "fund" means the public employee retirement
18 savings fund;

19 I. "participant" means an employee first employed by
20 an affiliated employer on or after July 1, 1998 who elects to
21 participate in the plan and who:

22 (1) is currently employed by an affiliated
23 public employer; or

24 (2) is not currently employed by an affiliated
25 public employer and who has not withdrawn his participant

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1 contributions and has not retired;

2 J. "participant contributions" means the amounts
3 deducted from the salary of a participant and credited to the
4 participant's individual plan account;

5 K. "participation" means an election to participate
6 in the plan by a participant;

7 L. "plan" means the retirement savings plan
8 established by the Public Employees Retirement Savings Act;

9 M "public employer" means the state, any
10 municipality, county, metropolitan arroyo flood control
11 authority, economic development district, regional housing
12 authority, soil and water conservation district, entity created
13 pursuant to a joint powers agreement, council of government,
14 conservancy district, water and sanitation district, water
15 district and metropolitan water board, including the boards,
16 departments, bureaus and agencies of a public employer, so long
17 as these entities fall within the meaning of "governmental plan"
18 as that term is used in Section 414(d) of the Internal Revenue
19 Code of 1986, as amended;

20 N. "refund beneficiary" means a person designated by
21 the participant, in writing in the form prescribed by the
22 association, as the person to whom the participant's accumulated
23 individual plan account balance is payable if the participant
24 dies prior to retirement or termination of employment with an
25 affiliated public employer;

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1 0. "retire" means to:

2 (1) terminate employment with all employers
3 covered by the state system or the Educational Retirement Act;
4 and

5 (2) receive a pension or annuity from the state
6 system or a pension pursuant to provisions of the Educational
7 Retirement Act;

8 P. "retired participant" means a person who has
9 retired and who is receiving a retirement annuity from the fund;

10 Q. "retirement annuity" means a series of monthly
11 payments to a retired participant or survivor beneficiary
12 pursuant to the provisions of the Public Employees Retirement
13 Savings Act;

14 R. "salary" means the base salary or wages paid a
15 participant, including longevity pay, for personal services
16 rendered; provided that "salary" does not include overtime pay,
17 allowances for housing, clothing, equipment or travel, payments
18 for unused sick leave, unless the unused sick leave payment is
19 made through continuation of the participant on the regular
20 payroll for the period represented by that payment, and any other
21 form of remuneration not specifically designated by law as
22 included in salary pursuant to the provisions of the Public
23 Employees Retirement Savings Act;

24 S. "state system" means the retirement programs
25 provided pursuant to the provisions of the Public Employees

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1 Retirement Act, the Public Employees Retirement Annuity Act, the
2 Judicial Retirement Act and the Magistrate Retirement Act;

3 T. "surviving spouse" means the spouse to whom the
4 participant was married at the time of the participant's death;
5 and

6 U. "survivor beneficiary" means a person who receives
7 a retirement annuity or who has been designated to be paid a
8 retirement annuity as a result of the death of a participant or
9 retired participant.

10 Section 19. [NEW MATERIAL] PARTICIPATION. --

11 A. Every employee first employed by an affiliated
12 public employer on or after July 1, 1998 and every elected
13 official first elected to an office with an affiliated public
14 employer after July 1, 1998 may elect to be a participant, unless
15 excluded from participation pursuant to Subsection B of this
16 section.

17 B. The following employees and elected officials are
18 excluded from participation:

19 (1) employees and elected officials covered
20 under the provisions of the Public Employees Retirement Act, the
21 Educational Retirement Act, the Judicial Retirement Act, the
22 Magistrate Retirement Act or the provisions of Sections 29-4-1
23 through 29-4-11 NMSA 1978 governing the state police pension
24 fund;

25 (2) employees designated by the affiliated

1 public employer as seasonal or student employees; and

2 (3) employees of an affiliated public employer
3 who have retired under and are receiving a pension or annuity
4 pursuant to the provisions of the Educational Retirement Act, the
5 Public Employees Retirement Act, the Judicial Retirement Act or
6 the Magistrate Retirement Act or a retirement annuity pursuant to
7 the provisions of the Public Employees Retirement Annuity Act.

8 C. Employees designated as seasonal or student
9 employees shall be notified in writing by their affiliated public
10 employer of the designation and the consequences of the
11 designation with respect to participation, service credit and
12 benefits. A copy of the notification shall be filed with the
13 association within thirty days of the date of employment.

14 D. During their term of service for an affiliated
15 public employer, employees and elected officials who have elected
16 not to be participants may subsequently elect to become
17 participants by filing a participation election form with the
18 association. Participation shall commence the first day of the
19 first pay period following the date the election is filed.

20 E. An election pursuant to this section shall not be
21 made or changed more often than once annually, except for
22 hardship as determined by the association.

23 F. The participation of an employee or elected
24 official shall cease if the employee terminates employment with
25 an affiliated public employer or the elected official leaves

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1 office and the employee or elected official requests and receives
2 a refund of participant contributions or his account balance.

3 Section 20. [NEW MATERIAL] PUBLIC EMPLOYEES RETIREMENT
4 SAVINGS FUND ESTABLISHED-- ADMINISTRATION OF FUND-- ACCOUNTING
5 FUNDS. --

6 A. The "public employee retirement savings fund" is
7 created as a trust fund in the state treasury. The fund shall
8 consist of participant contributions, public employer
9 contributions and any investment earnings on those contributions.
10 The board is the trustee of the fund, and shall administer and
11 invest it. Investment of the fund shall be made in the types of
12 investments authorized for funds invested pursuant to the Public
13 Employees Retirement Act; provided that the association shall
14 adopt regulations creating investment classifications, including
15 growth, income and other classifications, which participants may
16 elect for investment of amounts in their individual accounts.

17 B. The board may create separate subfunds for
18 purposes of administration. The board shall promulgate necessary
19 or appropriate rules and regulations to implement and administer
20 that act.

21 C. Expenses related to the investment of the fund and
22 administration of the Public Employees Retirement Savings Act
23 shall be paid from the fund.

24 D. A separate account within the fund shall be
25 maintained for each participant. However, the participant

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1 accounts shall not be maintained as segregated funds.

2 E. The accounts and fund provided for in this section
3 are held in trust for participants and shall be used only as
4 provided in the Public Employees Retirement Savings Act.

5 Section 21. [NEW MATERIAL] FUND NOT SUBJECT TO LEGAL
6 PROCESS--DIVISION OF FUNDS AS COMMUNITY PROPERTY--LEGAL PROCESS
7 TO SATISFY CHILD-SUPPORT OBLIGATIONS. --

8 A. Except as provided in Subsections B and C of this
9 section, none of the money, annuities or other benefits provided
10 pursuant to the provisions of the Public Employees Retirement
11 Savings Act shall be assignable either in law or in equity or be
12 subject to execution, levy, attachment, garnishment or other
13 legal process.

14 B. A court of competent jurisdiction, solely for the
15 purposes of effecting a division of community property in a
16 divorce or legal separation proceeding, may provide by
17 appropriate order for a determination and division of a community
18 interest in the retirement annuities or other benefits provided
19 pursuant to the Public Employees Retirement Savings Act. The
20 court shall fix the manner in which warrants are issued, may
21 order direct payments to a person with a community interest in
22 the retirement annuities or other benefits, may require the
23 election of a specific form of payment and designation of a
24 specific survivor beneficiary or refund beneficiary and may
25 enjoin the refund or withdrawal of the individual plan account.

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1 Payments pursuant to such orders shall only be made when a
2 participant's individual account is refunded or withdrawn, or
3 when a retirement annuity is payable, pursuant to the Public
4 Employees Retirement Savings Act. The court shall not alter the
5 manner in which the amount of annuities or other benefits are
6 calculated by the association or cause any increase in the
7 actuarial present value of the retirement annuities or other
8 benefits to be paid by the association.

9 C. A court of competent jurisdiction, solely for the
10 purposes of enforcing current or delinquent child-support
11 obligations, may provide by appropriate order for withholding
12 amounts due in satisfaction of current or delinquent
13 child-support obligations from the retirement annuities or other
14 benefits provided in the Public Employees Retirement Savings Act
15 and for payment of such amounts to third parties. The court
16 shall not alter the manner in which the amount of retirement
17 annuities or other benefits are calculated by the association.
18 The court shall not cause any increase in the actuarial present
19 value of the retirement annuities or other benefits to be paid
20 from the fund. Payments made pursuant to such orders shall only
21 be made when a participant's individual account is refunded or
22 withdrawn, or when a retirement annuity is payable, pursuant to
23 the Public Employees Retirement Savings Act. In no case shall
24 more money be paid out, either in a lump sum or in annuity
25 payments, for current or delinquent child-support obligations

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1 than would otherwise be payable at that time.

2 Section 22. [NEW MATERIAL] RETIREMENT ANNUITY--AGE AND
3 SERVICE CREDIT REQUIREMENTS FOR NORMAL RETIREMENT. --

4 A. The age and service credit requirements for the
5 retirement annuity option provided in the Public Employees
6 Retirement Savings Act are age sixty-two or older and at least
7 two full years of service credit.

8 B. If a participant leaves elected office or
9 employment with an affiliated public employer before meeting the
10 age and service credit requirements for the retirement annuity
11 pursuant to Subsection A of this section, that participant may:

12 (1) leave the balance in his individual plan
13 account in the fund to be invested on an ongoing basis and apply
14 for retirement when the participant meets the age and service
15 credit requirements specified in Subsection A of this section;

16 (2) have the plan account balance transferred
17 to another retirement plan;

18 (3) if the participant has met the service
19 credit but not the age requirement, withdraw his entire
20 individual plan account balance, including investment earnings;
21 or

22 (4) if the participant has met neither the
23 service credit nor the age requirement, withdraw the
24 participant's contributions only.

25 C. No participant shall be eligible to receive a

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1 retirement annuity or other benefits, including withdrawal of his
2 individual account, pursuant to the provisions of the Public
3 Employees Retirement Savings Act while still holding elective
4 office or employed by an affiliated public employer, except as
5 otherwise provided in that act.

6 Section 23. [NEW MATERIAL] RETIREMENT ANNUITY--AMOUNT. --
7 The amount of a participant's basic plan annuity is equal to the
8 total amount credited to his individual account or the date he
9 retires, plus estimated future earnings on that amount, amortized
10 over the term of his life expectancy, as determined by the board.

11 Section 24. [NEW MATERIAL] RETIREMENT ANNUITY PLAN--
12 PARTICIPANT AND EMPLOYER CONTRIBUTIONS. --

13 A. A participant may elect to contribute any amount
14 not to exceed six percent of his salary to the fund for credit to
15 his individual account. Contribution rates or amounts may not be
16 changed more often than twice annually, except for cases of
17 hardship as determined by the board.

18 B. A participant's affiliated public employer shall
19 contribute to the fund for credit to the participant's account
20 one-half of the participant's contribution, not to exceed three
21 percent of the participant's salary, starting with the first pay
22 period ending within the calendar month in which the participant
23 elects to participate.

24 Section 25. [NEW MATERIAL] ELECTION OF FORM OF PAYMENT OF
25 RETIREMENT ANNUITY. --

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1 A. Except as otherwise provided in Section 22 of this
2 act, a participant may elect to have annuity payments made under
3 any one of the forms of payment provided in Section 27 of this
4 act. The election of a form of payment and the naming of a
5 survivor beneficiary shall be made on a form furnished by and
6 filed with the association prior to the date the first retirement
7 annuity payment is made. An election of form of payment shall
8 not be changed after the date the first retirement annuity
9 payment is made. If the participant is married, the association
10 shall obtain the consent of the participant's spouse to the
11 election of the form of payment and any designation of survivor
12 beneficiary before the election or designation is effective.
13 Except as provided in Subsection C of this section, a named
14 survivor beneficiary shall not be changed after the date the
15 first retirement annuity payment is made if form of payment B or
16 C is elected. Except as otherwise provided in Section 22 of this
17 act, payment shall be made, at the participant's option, as
18 follows:

19 (1) a lump sum totaling the entire balance in
20 his individual account, including accrued investment earnings; or

21 (2) if the participant is not married at the
22 time of retirement and if there is not a timely election of
23 another form of payment, under form of payment A; or

24 (3) if the participant is married at the time
25 of retirement and there is not a timely election of another form

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1 of payment, under form of payment C with the participant's spouse
2 as survivor beneficiary.

3 B. The amount of retirement annuity under forms of
4 payment B, C and D shall have the same actuarial present value,
5 computed as of the effective date of the retirement annuity, as
6 the amount of retirement annuity under form of payment A.

7 C. A retired participant who is being paid a
8 retirement annuity under form of payment B or C with the
9 participant's spouse as the designated survivor beneficiary may,
10 upon becoming divorced from the named spouse and subject to an
11 order of a court as provided in Section 22 of this act, elect to
12 have future payments made under form of payment A.

13 Section 26. [NEW MATERIAL] FORMS OF PAYMENT OF RETIREMENT
14 ANNUITY. --

15 A. Straight life annuity is form of payment A. The
16 retired participant is paid the retirement annuity for life under
17 form of payment A. All payments stop upon the death of the
18 retired participant. The amount of retirement annuity is
19 determined in accordance with the individual plan account balance
20 applicable to the retired participant.

21 B. Life payments with full continuation to one
22 survivor beneficiary is form of payment B. The retired
23 participant is paid a reduced retirement annuity for life under
24 form of payment B. When the retired participant dies, the
25 designated survivor beneficiary is paid the full amount of the

1 reduced retirement annuity until death. If the designated
2 survivor beneficiary predeceases the retired participant, the
3 amount of retirement annuity shall be changed to the amount that
4 would have been payable had the retired member elected form of
5 payment A.

6 C. Life payment with one-half continuation to one
7 survivor beneficiary is form of payment C. The retired
8 participant is paid a reduced retirement annuity for life under
9 form of payment C. When the retired participant dies, the
10 designated survivor beneficiary is paid one-half the amount of
11 the reduced retirement annuity until death. If the designated
12 survivor beneficiary predeceases the retired participant, the
13 amount of pension shall be changed to the amount that would have
14 been payable had the retired participant elected form of payment
15 A.

16 D. Life payments with temporary survivor benefits for
17 children is form of payment D. The retired participant is paid a
18 reduced retirement annuity for life under form of payment D.
19 When the retired participant dies, each declared eligible child
20 is paid a share of the reduced retirement annuity until death or
21 age twenty-five years, whichever occurs first. The share is the
22 share specified in writing and filed with the association by the
23 retired participant. If shares are not specified in writing and
24 filed with the association, each declared eligible child is paid
25 an equal share of the reduced retirement annuity. A

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1 redetermination of shares shall be made when the retirement
2 annuity of any child terminates. An eligible child is a natural
3 or adopted child of the retired participant who is under age
4 twenty-five years. A declared eligible child is an eligible
5 child whose name has been declared in writing and filed with the
6 association by the retired participant at the time of election of
7 form of payment D. The amount of retirement annuity shall be
8 changed to the amount of retirement annuity that would have been
9 payable had the retired participant elected form of payment A
10 upon there ceasing to be a declared eligible child during the
11 lifetime of the retired participant.

12 Section 27. [NEW MATERIAL] SURVIVOR'S RETIREMENT
13 ANNUITY. --

14 A. Unless a participant has designated a survivor
15 beneficiary in accordance with Subsection B of this section, a
16 survivor retirement annuity shall be paid for life to a
17 participant's or retired participant's surviving spouse.

18 B. A participant may designate, in writing in a form
19 prescribed by the association, a survivor beneficiary to receive
20 the survivor's retirement annuity described in this section. If
21 the participant is married, a designation of survivor beneficiary
22 other than the participant's spouse may only be made with the
23 written consent of the participant's spouse. Marriage subsequent
24 to a designation of survivor beneficiary shall automatically
25 revoke the designation of survivor beneficiary. A designation of

1 survivor beneficiary made pursuant to a court order issued under
2 Section 22 of the this act shall not require the consent of the
3 participant's spouse, if any, and shall not be revoked by the
4 subsequent remarriage of the participant. A designation of
5 survivor beneficiary may be revoked by the participant at any
6 time prior to the participant's retirement. If the participant
7 is married, a revocation of designation of survivor beneficiary
8 may only be made with the written consent of the participant's
9 spouse.

10 C. If there is no surviving spouse and no designated
11 survivor beneficiary or if the surviving spouse dies while there
12 are still minor and dependent children of the participant, the
13 survivor's retirement annuity shall be paid to all minor and
14 dependent children, if any, of the participant, in equal shares,
15 so long as each child remains a minor or dependent child. As
16 each child ceases to be a minor or dependent child, the number of
17 shares shall be reduced and the amount payable to each remaining
18 child increased proportionately so that the total survivor's
19 retirement annuity remains unchanged as long as there is any such
20 child.

21 D. The survivor's retirement annuity is equal to a
22 percentage of the participant's retirement annuity as determined
23 by the association based on sound actuarial principles.

24 Section 28. [NEW MATERIAL] SUSPENSION OR FORFEITURE OF
25 BENEFITS. --If a participant retires and is subsequently employed

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1 by any employer covered by the state system or the Educational
2 Retirement Act, the retired participant's retirement annuity
3 pursuant to the Public Employees Retirement Savings Act shall not
4 be suspended or otherwise affected. However, the retired
5 participant may not then become a participant or eligible to
6 contribute further to the plan.

7 Section 29. [NEW MATERIAL] CORRECTIONS OF ERRORS AND
8 OMISSIONS-- ESTOPPEL. --

9 A. If an error or omission in an application or its
10 supporting documents results in overpayment to a participant or
11 beneficiary of a participant, the association shall recover all
12 overpayments made for a period of up to one year prior to the
13 date the error or omission was discovered.

14 B. A person who is paid more than the amount that is
15 lawfully due him as a result of fraudulent information provided
16 by the participant or beneficiary shall be liable for the
17 repayment of that amount to the association plus interest on that
18 amount at the rate set by the board plus all costs of collection,
19 including attorney fees if necessary. Recovery of such
20 overpayment shall extend back to the date the first payment was
21 made based on the fraudulent information.

22 C. Statements of fact or law made by board members or
23 employees of the board or the association shall not estop the
24 board or the association from acting in accordance with
25 applicable statutes.

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1 Section 30. Section 10-11-2 NMSA 1978 (being Laws 1987,
2 Chapter 253, Section 2, as amended) is amended to read:

3 "10-11-2. DEFINITIONS.--As used in the Public Employees
4 Retirement Act:

5 A. "accumulated member contributions" means the
6 amounts deducted from the salary of a member and credited to the
7 member's individual account, together with interest, if any,
8 credited to that account;

9 B. "affiliated public employer" means the state and
10 any public employer affiliated with the association as provided
11 in the Public Employees Retirement Act, but does not include an
12 employer pursuant to the Magistrate Retirement Act, the Judicial
13 Retirement Act or the Educational Retirement Act;

14 C. "association" means the public employees
15 retirement association established under the Public Employees
16 Retirement Act;

17 D. "disability retired member" means a retired member
18 who is receiving a pension pursuant to the disability retirement
19 provisions of the Public Employees Retirement Act;

20 E. "disability retirement pension" means the pension
21 paid pursuant to the disability retirement provisions of the
22 Public Employees Retirement Act;

23 F. "educational retirement system" means that
24 retirement system provided for in the Educational Retirement Act;

25 G. "employee" means any employee of an affiliated

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1 public employer;

2 H. "federal social security program" means that
3 program or those programs created and administered pursuant to
4 the act of congress approved August 14, 1935, Chapter 531, 49
5 Stat. 620, as that act may be amended;

6 I. "final average salary" means the final average
7 salary calculated in accordance with the provisions of the
8 applicable coverage plan;

9 J. "form of payment" means the applicable form of
10 payment of a pension provided for in Section 10-11-117 NMSA 1978;

11 K. "former member" means a person who was previously
12 employed by an affiliated public employer, who has terminated
13 that employment and who has received a refund of member
14 contributions;

15 L. "fund" means the funds included under the Public
16 Employees Retirement Act;

17 M. "member" means a person who first became an
18 employee before July 1, 1998 who is a currently employed,
19 contributing employee [~~of an affiliated public employer~~] or [~~a~~
20 ~~person~~] who has been but is not currently [~~employed by an~~
21 ~~affiliated public employer~~] an employee and who has not retired
22 [~~and who has not~~] or received a refund of member contributions;
23 "member" also includes the following persons regardless of the
24 date they first became employees:

25 (1) "hazardous duty member" means a state

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1 policeman who is a member and who is a juvenile or adult
2 correctional officer employed by a corrections facility of the
3 corrections department or its successor agency;

4 (2) "municipal fire member" means any member
5 who is employed as a full-time nonvolunteer firefighter by an
6 affiliated public employer and who has taken the oath prescribed
7 for firefighters;

8 (3) "municipal police member" means any member
9 who is employed as a police officer by an affiliated public
10 employer, other than the state, and who has taken the oath
11 prescribed for police officers; and

12 (4) "state police member" means any member who
13 is an officer of the New Mexico state police and who has taken
14 the oath prescribed for such officers;

15 N. "membership" means membership in the association;

16 O. "pension" means a series of monthly payments to a
17 retired member or survivor beneficiary as provided in the Public
18 Employees Retirement Act;

19 P. "public employer" means the state, any
20 municipality, city, county, metropolitan arroyo flood control
21 authority, economic development district, regional housing
22 authority, soil and water conservation district, entity created
23 pursuant to a joint powers agreement, council of government,
24 conservancy district, water and sanitation district, water
25 district and metropolitan water board, including the boards,

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1 departments, bureaus and agencies of a public employer, so long
2 as these entities fall within the meaning of governmental plan as
3 that term is used in Section 414(d) of the Internal Revenue Code
4 of 1986, as amended;

5 Q. "refund beneficiary" means a person designated by
6 the member, in writing, in the form prescribed by the
7 association, as the person who would be refunded the member's
8 accumulated member contributions payable if the member dies and
9 no survivor pension is payable or who would receive the
10 difference between pension paid and accumulated member
11 contributions if the retired member dies before receiving in
12 pension payments the amount of the accumulated member
13 contributions;

14 R. "retire" means to:

15 (1) terminate employment with all employers
16 covered by any state system or the educational retirement system;
17 and

18 (2) receive a pension from a state system or
19 the educational retirement system;

20 S. "retired member" means a person who has met all
21 requirements for retirement and who is receiving a pension from
22 the fund;

23 T. "retirement board" means the retirement board
24 provided for in the Public Employees Retirement Act;

25 U. "salary" means the base salary or wages paid a

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1 member, including longevity pay, for personal services rendered
2 an affiliated public employer. "Salary" shall not include
3 overtime pay, allowances for housing, clothing, equipment or
4 travel, payments for unused sick leave, unless the unused sick
5 leave payment is made through continuation of the member on the
6 regular payroll for the period represented by that payment, and
7 any other form of remuneration not specifically designated by law
8 as included in salary for Public Employees Retirement Act
9 purposes. Salary in excess of the limitations set forth in
10 Section 401(a) (17) of the Internal Revenue Code of 1986, as
11 amended shall be disregarded. The limitation on compensation for
12 eligible employees shall not be less than the amount that was
13 allowed to be taken into account under the state retirement
14 system acts in effect on July 1, 1993. For purposes of this
15 section, "eligible employee" means an individual who was a member
16 of a state system before the first plan year beginning after
17 December 31, 1995;

18 V. "state system" means the retirement programs
19 provided for in the Public Employees Retirement Act, the Public
20 Employees Retirement Annuity Act, the Magistrate Retirement Act
21 and the Judicial Retirement Act;

22 W. "state retirement system acts" means collectively
23 the Public Employees Retirement Act, the Public Employees
24 Retirement Annuity Act, the Magistrate Retirement Act, the
25 Judicial Retirement Act and the Volunteer Firefighters Retirement

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1 Act; and

2 X. "survivor beneficiary" means a person who receives
3 a pension or who has been designated to be paid a pension as a
4 result of the death of a member or retired member."

5 Section 31. Section 10-11-3 NMSA 1978 (being Laws 1987,
6 Chapter 253, Section 3, as amended) is amended to read:

7 "10-11-3. MEMBERSHIP- - REQUIREMENTS- - EXCLUSIONS- -
8 TERMINATION. - -

9 A. Except as may be provided for in the Public
10 Employees Retirement Annuity Act, the Volunteer Firefighters
11 Retirement Act, the Judicial Retirement Act, the Magistrate
12 Retirement Act, the Educational Retirement Act and the provisions
13 of Sections 29-4-1 through 29-4-11 NMSA 1978 governing the state
14 police pension fund, each employee and elected official of every
15 affiliated public employer shall be a member of the association,
16 unless excluded from membership in accordance with Subsection B
17 of this section.

18 B. The following employees and elected officials are
19 excluded from membership in the association:

20 (1) elected officials who file with the
21 association a written application for exemption from membership
22 within thirty days of taking office;

23 (2) elected officials who file with the
24 association a written application for exemption from membership
25 within thirty days of the date the elected official's public

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1 employer becomes an affiliated public employer;

2 (3) employees designated by the affiliated
3 public employer as seasonal or student employees;

4 (4) employees who file with the association a
5 written application for exemption from membership within thirty
6 days of the date the employee's public employer becomes an
7 affiliated public employer;

8 (5) employees of an affiliated public employer
9 that is making contributions to a private retirement program on
10 behalf of the employee as part of a compensation arrangement who
11 file with the association a written application for exemption
12 within thirty days of employment, unless the employee has
13 previously retired under the provisions of the Public Employees
14 Retirement Act; and

15 (6) employees of an affiliated public employer
16 who have retired under and are receiving a pension pursuant to
17 the provisions of the Educational Retirement Act.

18 C. Employees designated as seasonal and student
19 employees shall be notified in writing by their affiliated public
20 employer of the designation and the consequences of the
21 designation with respect to membership, service credit and
22 benefits. A copy of the notification shall be filed with the
23 association within thirty days of the date of employment.

24 D. An exemption from membership by an elected
25 official shall expire at the end of the term of office for which

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1 filed.

2 E. Employees and elected officials who have exempted
3 themselves from membership may subsequently withdraw the
4 exemption by filing a membership application. Membership shall
5 commence the first day of the first pay period following the date
6 the application is filed.

7 F. The membership of an employee or elected official
8 shall cease if the employee terminates employment with an
9 affiliated public employer or the elected official leaves office
10 and the employee or elected official requests and receives a
11 refund of member contributions. "

12 Section 32. TEMPORARY PROVISION--NON-APPLICABILITY OF
13 PUBLIC EMPLOYEES RETIREMENT ACT. --

14 A. Notwithstanding any other provision of law, the
15 Public Employees Retirement Act does not apply to any employee of
16 an affiliated public employer, as defined in that act, first
17 employed by such an employer on and after July 1, 1998, except:

- 18 (1) hazardous duty members;
19 (2) municipal fire members;
20 (3) municipal police members; and
21 (4) state police members.

22 B. Nothing in this act affects the rights of former
23 members of the public employees retirement association first
24 employed before July 1, 1998 to become members and receive
25 benefits under the Public Employees Retirement Act by purchasing

Underscored material = new
~~[bracketed material] = delete~~

1 forfeited service credit, so long as such forfeited service
2 credit accrued prior to July 1, 1998 aggregates at least five
3 full years' service credit.

4 Section 33. EFFECTIVE DATE. --The effective date of the
5 provisions of this act is July 1, 1998.

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